IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2007

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.5044 of 1999

T.Kaliyamoorthy ..Petitioner

vs.

1. D.R.O. District Revenue Officer,
   Thanjavur

2. The Assistant Settlement Officer,
   Thanjavur

3. Tahsildar,
   Pattukkottai Taluk
   Thanjavur District. ..Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the second respondent order in Mu.Mu.No.297/96/E1, dated 22.7.1996, and the confirmation order passed by the first respondent in Na.Ka.No.72727/96/U3, dated 28.9.1998, and quash the same.

For petitioner : K.Sakthivel
For respondents : Mr.V.Manoharan
Government Advocate

O R D E R

Heard Mr.K.Sakthivel, the learned counsel appearing for the petitioner and Mr.V.Manoharan, the learned Government Advocate appearing for the respondents.

2. It has been stated by the petitioner that he is a permanent resident of Kurichi Village, Pattukkottai Taluk, for over 40 years. His family has been in possession of the property consisting of 10 cents in S.No.147/10 of 101 Kurichi Village, Pattukkottai Taluk. The property is a poromboke land in which the petitioner's family has been residing by constructing a building therein.

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3. It has been further stated by the petitioner that in the year 1979, the third respondent had issued a B. Memo with regard to the said property. Thereafter, the petitioner had preferred a civil Suit in O.S.No.1155 of 1979, on the file of the District Munsif Court, Pattukkottai, praying for the relief of declaration and for injunction, declaring that the petitioner has got a pre-emptive right over the said property. Since, the suit had been dismissed, on 8.4.1981, the petitioner had preferred a first appeal in A.S.No.36 of 1981, before the Subordinate Court, Pattukotai. The first appeal had been allowed, on 13.11.1981. Aggrieved by the judgment and decree of the first appellate Court made in A.S.No.36 of 1981, the third respondent had preferred a second appeal before this Court in S.A.No.1240 of 1982.

4. It has been further stated by the petitioner that proceedings were initiated to grant patta in favour of the persons who were in actual possession of the poromboke lands. Accordingly, the Special Tahsildar (Natham settlement), Pattukkottai, had initiated the proceedings by way of enquiries, based on which the petitioner was granted patta in respect of the S.No.147/10 of 101 Kurichi Village, Pattukkottai Taluk, on 9.1.1991, in patta No.118 of Village No.63, Kurichi Village, Thanjavur District.

5. It has been further stated by the petitioner that on 19.10.1994, this Court had allowed the second appeal, setting aside the judgment and decree made in A.S.No.36 of 1981, and consequently, restoring the judgment and decree of the trial Court made in O.S.No.1155 of 1979. Based on the judgment and decree of this Court made in S.A.No.1240 of 1982, the second respondent had initiated proceedings to cancel the patta granted to the petitioner. Accordingly, the patta granted to the petitioner was cancelled by the second respondent in his proceedings Mu.Mu.297/96/E1, dated 22.7.1996. Against the said order of cancellation of patta, the petitioner had preferred a revision before the first respondent. However, the first respondent confirmed the order of the second respondent,by his proceedings Na.Ka.No.72727/96/U.3, dated 28.9.1998. Hence, the petitioner has come before this Court by filing the present writ petition, under Article 226 of the Constitution of India.

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6. The main contention of the learned counsel appearing for the petitioner is that the land in question is Grama Natham in which the State Government cannot claim an automatic right.

7. The learned counsel appearing for the petitioner had relied on the decision of a learned Single Judge of this Court, dated 31.1.2003, made in W.P.Nos.382 to 394 of 2001, which has been confirmed by a Division Bench of this Court reported in THE EXECUTIVE OFFICER, KADATHUR TOWN PANCHAYAT HARUR TALUK, DHARMAPURI DISTRICT Vs.

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V.SWAMINATHAN AND OTHERS (2004 (3) CTC 270).

8. Paragraph 13 of the said order of the Division Bench of this Court reads as follows:

> "13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further such a summary eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions."

9. It has been further submitted that the impugned orders have been passed by the first and second respondents without giving sufficient opportunity to the petitioner to substantiate his claims with regard to the property in question.

10. The learned Government Advocate appearing for the respondents had submitted that the impugned orders have been passed by the concerned respondents, in accordance with law, based on the records available including the judgment and decree of this Court, dated 19.10.1994, made in S.A.No.1240 of 1982. Since the petitioner had encroached upon the lands belonging to the State Government, the proceedings had been initiated against the petitioner to evict him in accordance with the procedure established by law.

11. At the stage of the hearing of the writ petition, the learned counsel appearing for the petitioner had submitted that the orders of the first and second respondents may be set aside and the petitioner may be given an opportunity to substantiate his claims before the concerned authority, in view of the order of the Division Bench of this Court, reported in THE EXECUTIVE OFFICER, KADATHUR TOWN PANCHAYAT, HARUR TALUK, DHARMAPURI DISTRICT Vs. V.SWAMINATHAN AND OTHERS (2004 (3) CTC 270).

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12. The learned Government Advocate appearing for the respondents has no objection for such an order being passed by this Court.

13. In view of the submissions made by the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents, the impugned order of the second respondent in Mu.Mu.297/96/E1, dated 22.7.1996, and the confirmation

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order passed by the first respondent in Na.Ka.No.72727/96/U3, dated 28.9.1998, are set aside and the matter is remitted back to the second respondent to initiate appropriate proceedings against the petitioner, in accordance with law, after affording sufficient opportunity to the petitioner.

The writ petition is disposed of accordingly. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. D.R.O. District Revenue Officer,
   Thanjavur

2. The Assistant Settlement Officer,
   Thanjavur

3. Tahsildar,
   Pattukkottai Taluk
   Thanjavur District

+ 1 CC To Mr. K.Sakthivel, Advocate SR NO. 70911

+ 1 CC to the Government Pleader SR NO 70780

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